IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc Application No. 693/2001

Yaswant Singh

vs

State

Date of decision :- 13.7.05

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 13.7.05 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 693 OF 2001
(no.2895 of 1992- old number)

Yasvant Singh son of Kunwar Singh
Resident of Pulyasun Patti Langur Walla,
P.S. Langur Walla, district Pauri Garhwal
.....Applicant

VERSUS

State of Uttaranchal
..... Respondent

Hon'ble J.C.S. Rawat, J.

1. Heard Sri Raman Kumar Sah learned counsel for the applicant and learned A.G.A and perused the record.

2. This is a petition u/s 482 Cr.P.C. for quashing the proceedings of criminal case no.278 of 1991 under section 457/380IPC pending in the court of Civil Judge(JD)/Judicial Magistrate, Lansdowne, Pauri Garhwal.1

3. The brief facts are that a FIR was lodged with Patwari Patti on 1.4.1991 alleging therein that a theft was committed in the night of 26/27.3.1991 at the house of the complainant when his wife and sister-in-law were sleeping on the first floor of his house. While sleeping on the first floor they locked the upper storey of the said house. When they went on the upper storey in the morning they found that the locks of the said rooms were broken and two boxes were found lying in front of Gaushala nearby his house. The accused persons were named in the FIR on suspicion. The

investigation was conducted and a charge sheet was submitted against the applicant.

4. Perusal of record reveals that the application was dismissed in default and was restored to its original number. In the meantime the trial proceeded before the trial court. It was contended by the learned counsel for the applicant that the charge has been framed against the applicant and the trial court has examined four witnesses. He has filed supplementary affidavit in which he has filed copies of the statements recorded by the learned trial court. It was contended by the learned counsel for the applicant that there is no evidence against the applicant and the proceedings are liable to be quashed. It was further contended that two witnesses have been declared hostile. It is well settled law that if the charge has been framed the charge should not be quashed except in exceptional circumstances. The applicant has an opportunity to argue that no prima facie case is made out against the applicant at the time of framing of charge. If the charge has been framed it means that there is a prima facie case to proceed with the trial. No prayer has been made in this application to quash the charge.

5. It has been held in **Radhey Shyam Versus Kunj Behari and others, 1989 Supp (2) Supreme Court Cases 572** that the High Court under section 482 Cr.P.C. at the stage of framing of charge is not justified in goig into meticulous consideration of evidence and appreciate documents and statements filed. The Apex Court has held in the case of **Kollakhmeanbhai Chanabhai Vs. State of Gujrat, 2000 Supreme Court (Cri) 13** that prosecution witnesses treated

hostile and cross-examined by the prosecution, evidence of even such witnesses to the extent the same supports the prosecution version, is admissible in trial if corroborated by other reliable evidence, can be relied upon.

6. Where the application has been filed to quash the proceedings the power to quash the proceedings should be exercised sparingly in the rare of rarest cases. The High Court cannot enter into the evidence about the reliability and genuineness or otherwise of the allegations made in the FIR or in the statements. The High Court has no power to enquire whether the allegations are reliable or not. The court cannot embark or evaluate the evidence. If the perusal of FIR and statements reveal that there is a commission of offence and there are sufficient grounds to proceed against the accused and the learned trial court has exercised the jurisdiction in right prospect, the High Court cannot interfere in these proceedings. It was further contended that two prosecution witnesses have been declared hostile and the High Court in the proceedings under section 482 Cr.P.C. is not supposed to evaluate the evidence it is the trial court who may evaluate the same and the accused applicant may advance his arguments before the court below at appropriate time.

7. In view of the above discussion I am of the view that the application devoids of merit and is liable to be dismissed.

8. The application u/s 482 Cr.P.C. is dismissed.

(J.C.S. RAWAT, J)

Dated 13.7.2005